THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.16431 OF 1998

DATED: 15-06-2007

Between:

A. Pundareekam

.. Petitioner

and

The Desk Officer, Ministry of Labour (representing Union of India), Shram Shakti Bhawan, New Delhi and others.

.. Respondents

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ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to the order No.L-40012/103/95-IR (DU), dated 27.06.1996, passed by the 1st respondent and to quash the same as arbitrary and illegal; and consequently to direct the 1st respondent to refer the dispute raised by the petitioner for adjudication to the concerned Industrial Tribunal or Labour Court or in the alternative to permit the petitioner to raise an Industrial Dispute before the Industrial Tribunal-I, Hyderabad.

It appears, the petitioner, while working as casual mazdoor with the 4th respondent, was terminated from service without following the due procedure as contemplated under Section 25-F of the Industrial Disputes Act. Since he had put in more than 240 days of service preceding the date of termination and since the same was illegal termination, he raised a dispute before the 2nd respondent. On failure of conciliation proceedings, the matter was referred to the Government of India, Ministry of Labour, New Delhi. However, the Government of India refused to refer the matter for adjudication, since the dispute was raised after a lapse of more than nine years. According to the petitioner, any delay caused in seeking reference cannot be a matter of consideration for the referring authority and, whether there was any delay or not, the referring authority is supposed to refer the matter to the Industrial Adjudicator. But, instead of that, the Government had flatly refused to refer the matter for adjudication, which is arbitrary and illegal.

The learned counsel for the 3rd and 4th respondents, Mr. R.S. Murthy, strenuously contended that the records relating to the service of the petitioner cannot be preserved for such a long time and

the period of limitation for keeping such records i.e. muster rolls is only five years.

He brought to the notice of this Court a Judgment of the Apex Court in **ASSISTANT EXECUTIVE ENGINEER, KARNATAKA VS. SHIVALINGA**[1], wherein the Apex Court held that the delay of more than nine years in approaching the Labour Officer, in cases where there is a serious dispute as to relationship of employer and employee and records of employer being relevant, non-availability of the records would come in the way of resolving the dispute. Situation of such nature would render the claim to have become stale. The said decision is very much applicable to the case on hand. Therefore, I am of the opinion that no interference can be made in a stale matter like this under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

The writ petition is, accordingly, dismissed. No costs.

C.V. RAMULU, J

15th June, 2007.
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[1] 2002 (1) LLJ 457